STATE OF MICHIGAN

COURT OF APPEALS

QUICK COMMUNICATIONS, INC., Petitioner-Appellant,	UNPUBLISHED October 7, 2010
v	No. 286679 Michigan Public Service Commission
MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN, Respondent-Appellee	LC No. 00-015381; 00-015391
and MICHIGAN PUBLIC SERVICE COMMISSION, Appellee.	

Before: SAAD, P.J., and HOEKSTRA and MURRAY, JJ.

SAAD, P.J. (*dissenting).*

I respectfully dissent because as the administrative law judge pointed out in his Clarification of Proposed Settlement, Quick knew full well what its choices were regarding Centrex service, either to take under AT&T tariff, or from the pricing schedule attached to the parties' interconnection agreement. As the mediator noted and as the MPSC ruled, Quick clearly knew that the MPSC never intended to require AT&T to provide wholesale UNE-based rates. As the MPSC showed, when Quick read the internal inconsistency between the references to wholesale UNE-based pricing and tariff rates, Quick should have realized that the mediator did not intend to guarantee Quick future services at a discounted *non-existent* tariff rate. Indeed, as noted by the MPSC, by filing its complaint to "enforce" the MPSC's order, Quick, in essence, tried to obtain a benefit not available to any competitor in the industry.

Quick's motion to enforce was nothing more than a ploy to gain advantages that neither the law nor the agreement of the parties, nor the MPSC's order affords and now that its strategy failed, Quick complains that it has to follow the law just like any other and every other competing local carrier in the state and in the country.

The essence of this case is that the MPSC simply interpreted its own order, something which courts routinely do and something which the law and good sense suggest this Court permit

the MPSC to do here because, under Michigan law, our courts defer to administrative agencies in areas of their peculiar expertise, especially when, as here, the MPSC interprets its own orders. *In Re MCI Telecom Corp Complaint*, 240 Mich App 292, 303; 612 NW2d 826 (2000). And, here, Quick has the temerity to feign outrage because when it asked the MPSC to enforce (which by definition requires the MPSC to interpret its previous order) -- interpret -- its own order, the MPSC did so. But in doing so, the MPSC refused to violate the law and explained why it refused to interpret its previous order in the manner requested by Quick. Because to do so, as the MPSC explained, would conflict with the Federal Communication Commission's Triennial Review Order, the MPSC's orders in Case No. U-14447 and the parties ICA.

Quick's appeal boils down to this: Quick's unsuccessful effort to enforce its implausible interpretation of the December 18, 2007, MPSC order necessitated the MPSC's interpretation of its own order. The majority would reverse on the ground that either (1) the first MPSC order was unlawful because it ordered action already ruled unlawful by the FCC and the federal courts, or, (2) the first MPSC Order was a "contract" that could not be modified by the MPSC on the same theory that courts are precluded from modifying clear contractual agreements between parties. On either theory for reversal and remand, the parties would likely be required to undergo the mediation process *ab initio*. And, while this process may likely be expedited were it to be submitted to the same administrative law judge, I disagree with the majority for the simple reason that Michigan law grants substantial deference to administrative agencies, such as the MPSC, to interpret its own orders, much like courts may interpret their orders.

Quite simply, because our courts have held that the MPSC has the right to modify or clarify its orders and because this is exactly what the MPSC did here, I would affirm. *In Re MCI Telecom Complaint*, 240 Mich App at 303.

I disagree with the decision to reverse and reject both rationales proffered by the majority because (1) while I agree that neither administrative agencies nor courts may rewrite parties' contracts, the MPSC has the right and reserved the right to interpret its orders and thus, the interpretive order entered here was not an amendment or rewriting of the parties' contract and (2) the original MPSC order, though complex, is not unlawful, and furthermore, would only be "unlawful" if the MPSC's original order were to be read in the unrealistic and opportunistic manner advanced by Quick, but correctly rejected by both the administrative law judge and the MPSC.

Regarding the contract theory advanced by Quick, the parties here are engaged in a complicated, highly technical and regulated business and operate together, not as simple contracting parties, but instead under a complex and ever-changing regulatory environment that defines their relationship, rights and responsibilities. Even the manner and method by which these parties "contract" with each other is comprehensively regulated through legislation and governed by "interconnection agreements" which are anything but typical contracts. Rather, they are a compilation of legislation and regulations that must be approved by state commissions. And, here, the very "agreement" under litigation was not negotiated by the parties; instead, Quick exercised its federal right to "opt in" to an existing agreement between AT&T and another competitor carrier under federal rules which allow a requesting carrier to adopt previously-approved agreements. Moreover, federal law further amends and complicates these "agreements" because federal law requires periodic amendment of the interconnect agreements to conform to changes in federal communications law. And, here, as a result of the changing

regulatory environment, the MPSC commenced comprehensive proceedings to revise all of AT&T's interconnection agreements with all carriers to conform to the requirements of the Triennial Review Remand Order ("TRRO") issued by the FCC. Moreover, though the legal and regulatory environments are complex, the instant litigation arises from a fairly commonplace issue -- a billing dispute between the parties, arising out of an interpretation of federal regulations, which resulted in two complaints filed with the MPSC by Quick. By law, the MPSC is required to appoint an administrative law judge to act as mediator and to order the parties to mediation. This was done and the mediator issued a recommended settlement that obliged the parties to pay the other for alleged overpayments or underpayments, respectively. The MPSC entered its December 18, 2007, order, which adopted the recommended settlement of the administrative law judge.

After the MPSC issued its order, Quick filed a motion, wherein it purported to seek enforcement of the MPSC's order and contended, among other things, that in terms of the future relationship of the parties, AT&T must offer Quick unbundled local Centrex switching – even though such a service is not available under any state tariff, is inconsistent with the parties' interconnection agreement, is inconsistent with the MPSC's orders in Case No. U-14447 implementing the TRRO, and would violate federal law.

AT&T responded to Quick's list of demands by pointing out that in the context of its interconnection agreements, the complex regulatory framework and previous adjudications by the MPSC, Quick's strained use of two technical words in the administrative law judge's recommendation was obviously wrong and that Quick's motion to enforce went far beyond merely requesting the MPSC to enforce its December 18, 2007 order. Indeed, the relief sought by Quick in its action to "enforce" the order was not sought by Quick in its complaints which led to the MPSC's original order. Because the parties' original dispute arose under their interconnection agreements, which, by law, required mediation, the MPSC issued its March 11, 2008 order, which directed the administrative law judge to mediate this dispute precipitated by Quick's motion to enforce, which necessitated an interpretation of the MPSC's December 18, 2007 order.

The mediator rejected Quick's unrealistic and opportunistic reading of the MPSC's order, accepted AT&T's proferred interpretation, and issued his Clarification of Proposed Settlement, which the MPSC adopted as its interpretation of its previous order.

And, as noted above, because the MPSC has the right to interpret its own orders, because our courts grant substantial deference to the MPSC's interpretations of its own orders, and because, here, the MPSC interpretation comports with the law and Quick's "reading" would violate the law, the contract between the parties and common sense, I would affirm the MPSC.

/s/ Henry William Saad